Univision Communications Inc.

CHRISTOPHER G. WOOD
Sr. VP, Assoc.General Counsel-Governmental and Regulatory Affairs

5999 Center Drive
Los Angeles, CA 90045-0073
310 348 3696 t
cwood@univision.net

univision COMMUNICATIONS INC

July 6, 2016

By ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: Notice of Ex Parte Communications
MB Docket No. 13-236
Amendment of Section 73.3555(e) of the Commission's Rules,
National Television Multiple Ownership Rule

Dear Ms. Dortch:

On June 29, 2016, Christopher Wood, Senior Vice President and Associate General Counsel of Univision Communications Inc. ("Univision"); Victoria Luxardo Jeffries, Vice President and Assistant General Counsel, Public Policy, of Univision; and Mace Rosenstein of Covington & Burling L.L.P. (the "Univision Representatives") met with Jessica Almond, Legal Advisor, Media, Public Safety and Enforcement, to Chairman Wheeler; Marc Paul, Legal Advisor to Commissioner Rosenworcel; and David Grossman, Chief of Staff and Media Policy Advisor to Commissioner Clyburn, regarding the referenced proceeding.

The Univision Representatives expressed concern regarding the impact of the Commission's proposal to eliminate the "UHF discount" without conducting a broader proceeding to examine the continuing validity of, and justification for, the 39% national cap itself, as these two components of the rule are inherently linked. They explained that Univision is one of the largest TV station owners in the United States, with 41 full power stations across the country. Most of Univision's stations are, and have always been, allotted to the UHF band. In fact, the Univision station group was built over many years in good faith reliance on the UHF discount. If the Commission were to eliminate the discount, the national reach attributed to Univision's TV stations would almost double overnight — from about 23.5% to 44.8%. Moreover, in many of its markets Univision owns two full power stations, so forced divestiture of a particular market could require the sale of not one, but two stations.

The Univision Representatives therefore urged that if the Commission acts to eliminate the UHF discount, then it should *permanently* grandfather current combinations which, as a result of that action, would abruptly exceed the 39% national reach cap for the first time ever.

the course of our meetings, the Univision Representatives were asked to provide legal precedent in support of such permanent grandfathering. That support is set forth below.

As a general matter, in its 2002 Biennial Review Order, the Commission observed "that licensees of current combinations should be afforded an opportunity to retain the value of their investments made in reliance on our rules and orders."[1] The Commission also has stated that "the harshness of the divestiture remedy appears to us only warranted in those situations where there would otherwise be a virtual monopoly over local video expression."[2] Moreover, in evaluating the potential impact of forced divestiture on diversity, the Commission has concluded that it must weigh "other public interest consequences such as continuity of operations, local ownership, demand for capital equity and local dislocations."[3]

Thus, for example, and consistent with these policy imperatives, the Commission permanently grandfathered certain broadcast television/cable system ownership combinations.[4] Similarly, in proceedings regarding broadcast radio multiple ownership, the Commission declined to require divestiture where doing so would "punish stations in the first case for excellence in serving the local community" if a multiple station owner that had acquired stations in compliance with the then-applicable 25% audience share cap subsequently exceeded the cap due to growth in audience share.[5]

The Commission has recently reaffirmed that forced divestiture does not always serve the public interest and that some markets and audiences are better served by the permanent grandfathering of historical combinations. Thus, when the Commission authorized permanent relief under the newspaper/broadcast cross-ownership ("NBCO") rule to permit the continued common ownership of WGN(AM), WGN-TV and the *Chicago Tribune* in 2012, it expressly recognized the "key role in the news and information culture of Chicago over generations in a manner that is

---

[1] *2002 Biennial Review Order — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13808 (¶ 484) (2003).

[2] *Amendment of Part 76, Subpart J, of the Commission's Rules and Regulations Relative to Cable Television Systems; and Postponement of Divestiture Requirement of Section 76.501 Relative to Prohibited Cross-Ownership in Existence on or Before July 1, 1970*, 55 FCC 2d 540, 544 (¶ 12) (1975) (providing for permanent grandfathering of certain existing combinations).

[3] *Id.* at 544 (¶ 11).

[4] *See id.* at 543-44 (¶ 11).

[5] *Revision of Radio Rules and Policies*, MM Docket No. 91-40, Report and Order, 7 FCC Rcd 2755, 2783 (¶ 56) (1992) (permitting radio station combinations to remain above the 25% audience share cap if they exceeded the cap due either to listenership gains or to minor fluctuations in audience share data over which they had no control. The FCC also provided that it would not require divestitures upon a transfer of control or assignment of a group whose combined share had exceeded the 25% limit under these circumstances).

not likely to be replicated by separate ownership."[6] Previously, in a 2008 order, the FCC had afforded similar permanent relief under the NBCO rule to five legacy broadcast/newspaper combinations — one to Gannett's newspaper/broadcast combination in Phoenix, Arizona, and four to Media General's combinations in Myrtle Beach-Florence, South Carolina; Columbus, Georgia; Panama City, Florida; and in the Tri-Cities, Tennessee/Virginia DMA.[7] The FCC concluded that permanent relief was warranted "in light of the synergies that have already been achieved from the newspaper/broadcast station combination[s], the new services provided to local communities by the combination[s], [and] the harms . . . associated with required divestitures," among other reasons.[8]

Permanent grandfathering of all currently-held broadcast licenses likewise is essential to protect Univision's existing Spanish-language program service from disruption. If Univision is forced to divest a number of full power television stations, it is highly unlikely that all of the stations it sold would continue to be Univision or Unimas Network affiliates or even air Spanish-language programming. This loss would be particularly significant for Hispanic television viewers, who rely heavily on over-the-air television. In some of Univision's markets, over 40% of its viewers watch Univision only over the air. As a result, forced divestitures would subvert the very goals the Commission cited in promulgating its national audience reach cap: to promote localism, diversity, and competition. The loss of Spanish-language over-the-air content in markets in which Univision would likely have to divest would decrease consumer options for locally-targeted, diverse, Spanish-language content.

Indeed, when Equity Media Holdings, at one time the Univision and Unimas Networks' second-largest affiliate group, declared bankruptcy and auctioned off its stations in 2009, six of its stations that had been broadcasting Univision programming ceased doing so. Of those markets, Univision understands that Detroit and Syracuse were left without *any* full-time Spanish-language television station after the divestitures.[9]

[6] *See Applications of Tribune Company and Its Licensee Subsidiaries, Debtors in Possession, et al.*, 27 FCC Rcd 14239, 14254 (¶ 37) (2012).

[7] *2006 Quadrennial Regulatory Review — Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 06-121, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, at 2055-56, 2090 (¶¶ 77, 158) (2008), *aff'd in part, vacated in part on other grounds, Prometheus Radio Project v. FCC*, 652 F.3d 431 (3d Cir. 2011).

[8] *Id.* at 2055 (¶ 77) (footnote omitted).

[9] Markets where a Univision owned-and-operated station provides the only full power, primary Spanish-language broadcast service include Cleveland, Atlanta, Austin and Raleigh-Durham.

This letter is being submitted electronically pursuant to Section 1.1206(b) of the Commission's Rules. Please contact the undersigned if you have any questions about this submission.

Respectfully submitted,

Christopher G. Wood
Senior Vice President and Associate
General Counsel

cc: Jessica Almond
Marc Paul
David Grossman